

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:22-cv-244-MOC-DSC**

LINDA WASHINGTON,

Plaintiff,

vs.

**CEDAR FAIR, L.P.;
CAROWINDS, LLC; CITY OF
CHARLOTTE; RICHARD VIVAS;
JOHN DOE; and JOHN DOE 2,**

Defendant.

ORDER

THIS MATTER is before the Court on its own motion following Defendant Richard Vivas' Motion to Dismiss the lawsuit against him in his individual capacity pursuant to Rules 12(b)(4) and 12(b)(5) of the Federal Rules of Civil.

Plaintiff claims that Defendant Vivas was served in person, at 7:00 a.m. on July 22, 2022, at his South Carolina residence, by Mr. Corcoran, a North Carolina licensed private investigator, with a Federal Summons issued on July 21, 2022, a copy of the Superior Court Civil Summons issued April 26, 2022, and an Amended Complaint. (Doc. No. 26 at 9).

Defendant Vivas does not concede that proper service has been effected. Defendant Vivas notes there is no evidence on the record establishing service occurred or the lawful authority of Mr. Corcoran to serve process in South Carolina. (Doc. No. 27 at 2-3). Therefore, Defendant Vivas moves to dismiss the lawsuit against Defendant Vivas in his individual capacity pursuant to Federal Rules of Civil Procedure 12(b)(4) and 12(b)(5), asserting that Plaintiff never

caused sufficient process to issue against Defendant prior to removal, and that Plaintiff's purported attempt to serve Defendant individually with a Summons issued by this Court constituted insufficient service of process.

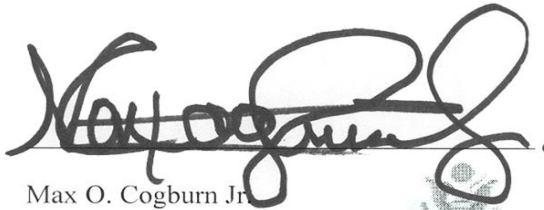
Plaintiff bears the burden of establishing the issuance of proper process and the burden of showing that service of process has been accomplished in accordance with the Federal Rules of Civil Procedure. See Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. 1993); White by & through White v. Aetna Life Ins. Co., 519 F. Supp. 3d 253, 258 (W.D.N.C. 2021).

Before ruling on the Motion to Dismiss, the Court orders the Plaintiff to submit evidence establishing that service was made on Defendant Richard Vivas on July 22, 2022 and that Mr. Corcoran had lawful authority to serve process on Richard Vivas in South Carolina, along with any additional explanation Plaintiff wants to offer.

Plaintiff shall file a brief on this issue within 20 days. Defendant shall then have 10 days in which to file a response brief. Briefs shall not exceed 5 pages and shall be limited to the issue of proof of service.

IT IS SO ORDERED.

Signed: October 17, 2022


Max O. Cogburn Jr.
United States District Judge